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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,334	03/08/2004	Fermin Enecoiz Gomez	P/188-11	2014

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EXAMINER
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THOMAS, JAISON P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/796,334	GOMEZ, FERMIN ENECOIZ	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jaison P. Thomas	1751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/8/2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Abstract of the Disclosure***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it need not recite "The present invention refers to" in line 3. Further, in lines 4-5, the phrase "in which it is used bleaching solutions" is grammatically incorrect. It is suggested that applicant amend said phrase for purposes of clarification. Also, in line 8, it is suggested that "said" be replaced with "the." Appropriate correction is required. See MPEP § 608.01(b).

### ***Specification***

2. The disclosure is objected to because of the following informalities: applicant is suggested to delete "HYPERLINK" from pg. 1, line 7 of the Specification. Also, applicant is suggested to clarify or define the meaning of the phrase "nutritional value" as mentioned several times in the Specification (e.g. pg. 1, line 12).

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Applicant is also suggested to check the specification to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Appropriate correction is required.

### ***Claim Objections***

3. Claims 6, 13, and 20 are objected to because of the following informalities: applicant is suggested to amend "disphosphoric-1,1-hydroxyethane-1 acid" to -- disphosphonic-1,1-hydroxyethane-1 acid-- so that consistent terminology is maintained between the specification and the claims.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. Claims 3-5, 7-11, 14-18, 21-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3-5, 7-11, 14-18, 21-25 include the limitations for "% ratio" (e.g. Claim 4, line 2) or "ratio of 2%" (Claim 3, line 2). The usage of "ratio" is unclear and applicant is suggested to word differently, for example in Claim 4, --The bleaching composition according to claim 1, wherein the phosphoric acid is present in the composition at 1%

by weight of the composition.-- For purposes of examination, all references in claims to "% ratio" will be construed to indicate % weight of the composition.

In addition, applicant is suggested to amend Claims 7, 14, and 21 wherein the claims refer to "disphosphoric-1,1-hydroxyethane-1 acid" to --disphosphonic-1,1-hydroxyethane-1 acid-- to maintain consistent terminology between the specification and the claims.

In addition, Claim 3 recites the limitation "the disodium phosphate dodecahydrate" in line 2. There is insufficient antecedent basis for this limitation in Claim 1 from which Claim 3 depends. For purposes of examination, Claim 3 will be considered dependent upon Claim 2 instead of Claim 1.

In addition, Claim 9 the limitation "96.7% ratio" in line 2 lacks support with respect to Claim 5 which refers to a "97% ratio." For purposes of examination, Claim 9 will be considered dependent upon Claim 1.

In addition, Claim 14 recites the limitation "disphosphoric-1,1-hydroxyethane-1 acid" in line 2 of the claim. There is insufficient antecedent basis for this limitation in Claim 12 on which Claim 14 depends. For purposes of examination, Claim 14 will be considered as dependent upon Claim 13 instead of Claim 12.

In addition, Claims 15, 22 and 24 recites the limitation "phosphoric acid" in line 2 of each claim. There is insufficient antecedent basis for this limitation in Claim 12 from which Claim 15 depends and in Claim 19 from which Claims 22 and 24 depend. For purposes of examination, the limitation in Claims 12 and 19 for "phosphonic acid" will be

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considered as "phosphoric acid." Also, in Claim 24, there is a symbol in front of "phosphate" and it is suggested that the symbol be deleted.

Claim 26 is indefinite because it is not clear how the solution is used as an additive, whether it is by "contacting" or "exposing." It is suggested that active steps be added to the claim.

Claim 27 recites the limitation " ... can be clothes of mixed fibers (mezclilla)." Applicant fails to clarify whether both mixed fibers and mezclilla are required claim limitations or if they can be chosen alternatively. Further, it is unclear as to what the meaning of "mezclilla" is and applicant is suggested to amend claim using properly translated terminology.

Claim 28, which is dependent upon Claim 26, is rejected as well.

### ***Double Patenting***

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 19, 20, 21, 22, 23, and 24 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 12, 13, 14, 15, 16, and 17 respectively. When two claims in an application are duplicates or else are so close in content that they both cover the

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same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

For purposes of examination, Claim 25 will be considered dependent upon Claim 17 instead of Claim 24.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 5, 6, 7, 9, 26 and 27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Scialla (WO 99/15615).

Scialla teaches a variety of aqueous bleaching compositions with sample compositions disclosed in Examples 6 and 7 comprising sodium hypochlorite, hydroxyethane disphosphonic acid (including 1% by weight in the composition (pg. 5, line 34) as required by Claim 7), and water (pg. 12, lines 6-9). The liquid bleaching composition comprises from 60 to 98% water by weight (pg. 6, lines 22-24). The bleaching composition disclosed can have a range of pH values from 7.5 to 13 (pg. 6,

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line 30). Scialla also teaches a method of using the disclosed bleaching composition to bleach various types of fabrics (pg. 2, lines 19-23) wherein the fabric is construed to read on clothes with mixed fibers as required by the instant claims.

Scialla teaches the limitations of the instant claims and hence Scialla anticipates the claims. Even if the teachings of Scialla are not sufficient to anticipate the claims, it would be<sup>have</sup><sub>en</sub> obvious to one of ordinary skill in the art at the time the invention was made to<sup>↑</sup> modify the pH ranges and the weight percentages of the hydroxyethane diphosphonic acid (which is equivalent to diphosphoric-1,1-hydroxyethane-1 acid) in the aqueous bleaching compositions because the claimed ranges overlap or lie inside ranges disclosed by the prior art (see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I).

9. Claims 1, 4, 5, 6, 7, 8, 9 and 26 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Todini (US 2003/0109404).

Todini teaches a variety of aqueous bleaching compositions with sample compositions disclosed in Examples I, II, and III comprising sodium hypochlorite and sodium tripolyphosphate (pg. 9, Table between paras. 0130-0131). The liquid bleaching composition comprises from 60 to 98% water by weight (pg. 1, para. 0009). The bleaching composition disclosed can have a range of pH values from 8 to 14 and the diluted solution can have a pH range of 7.5 to 13 (pg. 4, para. 0051). Additional

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components in the disclosed bleaching composition include a series of chelating agents, including phosphonate chelating agents such as "alkali metal ethane 1-hydroxy diphosphonates (HEDP)" (pg. 3, para. 0035), which is equivalent to the diphosphoric-1,1-hydroxyethane-1 acid of the instant claims, and phytic acid which is taught to be a hexa-phosphoric acid (pg. 3, para. 0046). Todini teaches the composition to have anywhere up to 10% by weight of the chelating agents either separately or in mixtures thereof (the "1% ratio" in instant Claims 4 and 7 and "2.3% ratio" in instant Claim 8 falls inside the "up to 10% by weight"). Todini also teaches a method of using the disclosed bleaching composition to bleach various types of fabrics including clothes (pg. 8, para. 0122) wherein the fabric is construed to read on clothes with mixed fibers.

Todini teaches the limitations of the instant claims and hence Todini anticipates the claims. Even if the teachings of Todini are not sufficient to anticipate the claims, it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to modify the pH ranges and the weight percentages of the diphosphoric-1,1-hydroxyethane-1 acid and phosphoric acid in the aqueous bleaching compositions because the claimed ranges overlap or lie inside ranges disclosed by the prior art (see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I).

***Claim Rejections - 35 USC § 103***

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10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 13, 14, 16, 18, 19, 20, 21, 23, 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scialla as applied to the claims above.

Scialla is relied upon as discussed above. Scialla, however, does not teach the specific values for pH as claimed by the applicant.

A prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05I.

11. Claims 10-25, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todini as applied to the claims above.

Todini is relied upon as discussed above. Todini, however, does not teach (1) a bleaching composition wherein the phosphate is absent and (2) the specific values for pH as claimed by the applicant.

With respect to difference (1), it would have been obvious to one of ordinary skill in the art at the time the invention was made to create a bleaching formulation where the phosphate is absent since Todini teaches on pg. 3, para. 0031 that "chelating agents maybe any of those known to those skilled in the art such as the ones selected

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from the group comprising phosphonate chelating agents, phosphate chelating agents, polyfunctionally-substituted aromatic chelating agents, ethylenediamine N,N'-disuccinic acids, or mixtures thereof" and thus a composition without a phosphate compound is possible.

With respect to difference (2), a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium MetalsCorp. of America v. Banner*, 778F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05I.

12. Claims 4, 8, 10, 11, 15, 17, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scialla as applied to the above claims in view of Todini.

Scialla is relied upon as discussed above. However, Scialla does not teach the addition of phosphoric acid to the bleaching composition.

Todini teaches the use of phosphoric acid (discussed above) as an additive to a bleaching composition to stabilize hypochlorites.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add the phosphoric acid of Todini to the bleaching composition disclosed in Scialla because Todini teaches the benefit of using phosphoric acid as a stabilizer of hypochlorites.

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13. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scialla or Todini as applied to above claims, in view of the ChemicalLand21.com product description.

Schialla or Todini is relied upon as discussed above. Todini further teaches the role of chelating agents as able to "inactivate the metal ions present on the surface of the fabrics and/or in the cleaning compositions (neat or diluted) that otherwise would contribute to the radical decomposition of the hypohalite bleach" or alternatively stated Todini teaches the use of the chelating agents as stabilizers of hypohalites. Schialla or Todini, however, fails to teach the addition of disodium phosphate dodecahydrate to the bleaching composition.

The ChemicalLand21.com product description teaches the use of disodium phosphate dodecahydrate as a "stabilizer in the bleaching process of textiles" (Applications).

It would be have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the disodium phosphate dodecahydrate compound into the bleaching composition of Schialla or Todini because such addition would stabilize the bleaching process of the textiles as taught by the ChemicalLand21.com product description.

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**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. The references are considered cumulative to or less material than those discussed above.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaison P. Thomas whose telephone number is (571) 272-8917. The examiner can normally be reached on Mon-Fri 8:30 am to 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jaison Thomas J.T.

Examiner

1/20/2005

  
LORNA M. DOUYON  
PRIMARY EXAMINER